

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO.: 05-CV-2210(DC)
THE HONORABLE DENNY CHIN

RENATO GUIMARAES, JR.,

Plaintiff,

vs.

SPEISER, KRAUSE, NOLAN & GRANITO,
a professional corporation f/k/a SPEISER,
KRAUSE, MADOLE & LEAR, a professional
corporation,

Defendant.

ATTORNEYS' AFFIDAVIT IN SUPPORT OF MOTION TO STRIKE

**STATE OF FLORIDA
COUNTY OF BROWARD**

BEFORE ME, the undersigned authority, personally appeared, RICHARD E. BERMAN, known to me personally or identified to me by proper identification, who by me first duly sworn, and upon his oath, stated to me as follows:


1. I am a shareholder with Berman, Kean & Riguera, P.A., the attorneys for the Plaintiff in this action and thus am fully familiar with all proceedings previously held in this matter. I also attended the status conference in question which is the subject matter of Mr. Apuzzo's attorneys' affidavit of October 6, 2006.
2. Mr. Apuzzo is mistaken. At the August 11, 2006 status conference, the Court set a date for the making of dispositive motions: supporting papers by September 22, 2006, opposition papers due October 20, 2006, and reply papers due on October 30,

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2006. This schedule applied to the dispositive motions only. There was also some discussion about Speiser, Krause wanting to amend its answer. After some discussion, the Court said if you want to file your motion, file your motion. The Court did not set any special time frames with respect to same other than saying it was deemed filed that day. And indeed, it was rather clear that it would be handled in the ordinary course of business, governed by the Federal Rules of Civil Procedure and had nothing to do with the date settings for dispositive motions. The Court did not direct otherwise.

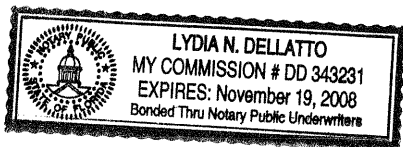
3. There can be no question that the reply was untimely. The Court has discretion to take whatever action it wishes, but it should do so with an accurate representation of the facts of what previously transpired before it. There was no mention of the time frame for the filing of a motion for leave to amend the answer or for any response or reply thereto. The Federal Rules of Civil Procedure would govern.

WHEREFORE, deponent respectfully requests that this Court strike the Defendant's reply in support of its motion to amend its answer and for such other and further relief as to the Court may seem just and proper.


Richard E. Berman

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SWORN AND SUBSCRIBED BEFORE ME, the undersigned authority, on this 10th day
of October, 2006.



Lydia N. Dellatto
Notary Public - State of Florida

Print Name of Notary

Seal:

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Regular
Mail and by Fax, this 10th day of October, 2006, to:

William J. Apuzzo, Esq.
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By: [Signature]
Richard E. Berman (RB-2715)